

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MUSOMA DISTRICT REGISTRY**

AT MUSOMA

PC PROBATE APPEAL NO. 8 OF 2021

*(Arising from decision of District Court of Musoma in PC Probate Appeal
No. 4 of 2021)*

BETWEEN

JULITA ALFREDY ACHACHA APPELLANT

VERSUS

**MARY EDWARD (Administratrix of the
estate of the late E.2991 CPL EDWARD RESPONDENT**

JUDGMENT

16th & 31st March, 2022

A. A. MBAGWA, J.

This is a second appeal arising from decision of the District Court of Musoma sitting as appellate court in PC Probate Appeal No. 4 of 2021.

The dispute in this appeal has rather a chequered story. The appellant, Julita Alfredy Achacha is a sister in law of the respondent in sense that the respondent is a widow of the appellant's brother, E.2991 CPL Edward

The deceased died intestate on 20/02/2019. He was survived by two widows namely, Mary Edward, the appellant and Rhoda Omary. Further, the deceased left a total of eight children. Following the demise of the deceased, the respondent **Mary Edward** applied for and was appointed the administratrix of the estates of her late husband **E.2991 CPL**

Edward through Probate Cause No. 63 of 2019 at Musoma Urban Primary Court (Masala, RM) on 24/05/2019. However, after sometimes, the appellant successfully applied for annulment of respondent appointment on the ground that the respondent was mismanaging the deceased's estates. Consequently, the court (P. R. Bissaya, RM) on 24th March, 2020 revoked the appointment of the respondent, Mary Edward.

Following the revocation of Mary Edward, Yusuph Achacha, the deceased's brother and Rhoda Omary, the deceased's 2nd wife applied for appointment of administrators of the estates of the deceased. Having considered the circumstances of the dispute, the court (P.P. Mkeha, RM) on 22nd December, 2020 appointed Yusuph Achacha, the deceased's brother, Rhoda Omary, the deceased's 2nd wife and Ladvin Edward, the deceased eldest son to be the administrators of the deceaseds' estates. Nullification of her appointment and appointment of the trio did not amuse the respondent. She thus appealed to the District Court of Musoma in Probate Appeal No. 4 of 2021. In the end, the District Court (T.Swai, SRM) on 23rd June, 2021 allowed the appeal and restored the appointment of the respondent, Mary Edward. More so, the District Court nullified the revocation of the respondent and subsequent appointment of the trio on the ground that the appellant, Julita Alfredy Achacha had no locus stand

to bring an application for revocation in terms of Rule 9 (1) of Primary Courts (Administration of Estates) Rules G.N No. 49 of 1971.

The appellant was not happy with restoration of the respondent as administratrix of the deceased's estates hence she knocked the door of this Court with two grounds against the decision of the District Court to wit;

1. That, the first appellate court erred in law when made its decision by holding that that the appellant had no locus stand to make an application for revocation of grant of letter of administration of estate of the late **E.2991 CPL EDWARD.**
2. That, the first appellate court's erred in law when failed to date its judgment.

When the appeal was called on for hearing, the appellant was represented by Mr. Noah Mwakisisile, the learned advocate whilst the respondent fended for herself.

Arguing in support of the appeal, Mr. Mwakisisile dropped the second ground and submitted only on the first ground of appeal. Mr. Mwakisisile faulted the first appellate court in holding that the appellant had no locus standi to apply for revocation of appointment of administrator of the estates of the deceased. He contended that the appellant is the

deceased's sister who applied for revocation of the respondent after she observed that the respondent was mismanaging the deceased's estates. Mr. Mwakisisile was of the view that the appellant had the locus standi as she felt squarely under the category of beneficiaries. In the event, Mr. Mwakisisile prayed the Court to allow the appeal and each party be ordered to bear its own costs.

In reply, the respondent resisted the appeal. She argued that she had no problems with her co-wife regarding the deceased's estates. She lamented that the problem is exacerbated by the deceased's sister, the appellant. She concluded that the appeal has no merits.

Intensely, I have gone through submissions of the parties and the record of appeal. The pivotal issue for determination of this appeal is whether by restoring the respondent as the administratrix of the deceased's estates, the first appellate court erred.

In arriving at its decision, the first appellate court considered the provisions of Rule 9 (1) of Primary Courts (Administration of Estates) Rules G.N No. 49 of 1971. The Rule is very clear that an application for revocation of appointment of administrator can only be made by either creditor, heir or beneficiary of the deceased's estates. The first appellate

magistrate was opined that the appellant, being the deceased's sister, was not among the persons mentioned under the Rule.

On my part, I am at one with the first appellate court that the appellant, being a mere sister of the late CPL Edward, has no any beneficial interest in the deceased's estates as required by rule 9 (1) of G.N No. 49 of 1971 taking into account that the deceased left two wives and eight children. The appellant would be deemed to have beneficial interest if she were mentioned in the will (which was not available in a particular matter) or the probate was in respect of the deceased of Islamic faith and governed by ***Sharia*** (Islamic Law).

If there are allegations that the respondent mismanaged the deceased's estates for her own benefit, it is those people mentioned under rule 9 (1) who can take the required legal action against her. For the case of appellant, I concur with Hon. T. Swai, SRM that she had no locus standi.


As pointed out above, I see no merits in this appeal. However, given the fact that the deceased had two wives, and in order to avoid mistrust to one another, I find it in the interest of justice to restore **Rhoda Omary** (the deceased's 2nd wife) to join the respondent, her co-widow to administer the deceased's estates.

In the upshot, I uphold the decision of the District Court of Musoma (first appellate court) to the extent explained and restore **Rhoda Omary** to join the respondent **Mary Edward** in administering the deceased's estates. Each party should bear its own costs.


It is so ordered.

The right of appeal is explained.




A. A. Mbagwa
JUDGE
31/03/2022

Court: The judgment has been delivered in the presence of the appellant and respondent this 31st day of March, 2022


A. A. Mbagwa
JUDGE
31/03/2022